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| 10/763,808      | 01/22/2004  | Ryan Riley           | 035813-004          | 5002             |

7590 ) 12/04/2006

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| EXAMINER |
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PHAM, THAI V

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| ART UNIT | PAPER NUMBER |
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2192

DATE MAILED: 12/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/763,808

Applicant(s)

RILEY, RYAN

Examiner

Thai Van Pham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 1/22/2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☒ Claim(s) 1, 21, 38 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

This is the initial office action based on the application filed on November 22, 2006.

Claims 1 – 38 are currently pending and have been considered below.

#### ***Claim Objections***

1. Claims 1, 21, and 38 are objected to because of the following informalities:  
missing semicolon at the end of "*processing said third request on said patch module*".

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 21 – 37 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

-- As disclosed in the specification of the application, all components recited in the claims that constitute the claimed system are constructed of software program objects and/or instructions ([0012]: "...the component, process steps, and/or data structures...").

Thus, the claimed system is considered a software program containing machine-executable instructions, per se (and not associated with any physical structure); therefore, it is non-statutory according to 35 U.S.C 101. For the purpose of further claim analysis under 35 U.S.C. 102 and 103, The Examiner treats Claims 21 – 37 as a

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computer program containing machine-readable instructions stored on a physical medium for performing the method or steps recited in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

**Examiner's Note:**

The following references are both produced by **Microsoft®** to provide descriptions for the same product:

Microsoft® Systems Management Server 2003.

**Ref-A:** "Concepts, Planning, and Deployment Guide, Microsoft® Systems Management Server 2003", 10/2003.

**Ref-B:** "Understanding Patch and Update Management: Microsoft's Software Update Strategy", 10/01/2003.

Claims 1 are rejected under 35 U.S.C. 102(a) as being anticipated by **Microsoft®**.

-- Claim 1.

**Microsoft®** discloses *a method for controlling communications in a system for automatically distributing a software update to a network of devices controlled by an organization, the method comprising:*

- *receiving a first request for available updates from a user interface, said request received by a web module;*

(The Distribute Software Updates Wizard installed on SMS site servers and Systems Management Control Panel associated with Software update inventory tools/Software

Updates Installation Agent installed on SMS clients contain an integrated UI and web module for receiving information from the UI.

**Ref-A:** Fig. 3.4, page 77: step 3; "The SMS administrator runs the Distribute Software Updates Wizard to view, evaluate, and authorize applicable software updates."

**Ref-A:** page 131: Systems Management Control Panel Icon: "Clicking this icon displays information about the SMS client software..."

- *processing said first request on said web module;*

(The Distribute Software Updates Wizard's and Systems Management Control Panel's integrated web modules automatically process information received from their respective integrated UI.)

- *sending a second request for available updates from the web module to a main module;*

(The Distribute Software Updates Wizard and Systems Management Control Panel further contain an integrated main module controlling the downloading and distribution of software updates. The integrated main module automatically processes information received from the integrated web module.

**Ref-A:** page 74: "...the software distribution related tasks..." of Distribute Software Updates Wizard.

**Ref-A:** page 131: "The General tab shows the discovery data for the computer.")

- *placing said web module in a listen state;*

(The Distribute Software Updates Wizard's and Systems Management Control Panel's integrated web modules constantly monitor information received at their respective integrated UI as well as patch module.)

- *processing said second request on said main module;*

(The Distribute Software Updates Wizard's and Systems Management Control Panel's integrated main modules automatically process information received from their respective integrated web module.)

- *sending a third request for available updates from said main module to a patch module;*

(The Distribute Software Updates Wizard further contains an integrated patch module for downloading and distributing software updates. The Systems Management Control Panel further contains an integrated patch module for discovering software components on the system. The integrated patch modules automatically process information received from the integrated main module.

**Ref-A:** Fig. 3.4, page 77: step 4; "The Distribute Software Updates Wizard downloads from the Microsoft downloads site the source files for the specified software update."

**Ref-A:** page 131: "The General tab shows the discovery data for the computer. The Components tab displays a list of components that are installed on the client and the status of each component.")

- *placing said main module in a listen state;*

(The Distribute Software Updates Wizard's and Systems Management Control Panel's integrated main modules constantly monitor information received at their respective integrated web modules and patch module)

- *processing said third request on said patch module;*

(The Distribute Software Updates Wizard's and Systems Management Control Panel's integrated patch modules automatically process information received from their respective integrated main module)

- *sending a first reply with a list of available updates from said patch module to said main module;*

(**Ref-A:** Fig. 3.4, page 77: step 5; "The Distribute Software Updates Wizard stores software update source files on a specified package source share.")

**Ref-A:** page 131: "The General tab shows the discovery data for the computer.")

- *sending a second reply with a list of available updates from said main module to said web module; and*

(**Ref-A:** Fig. 3.4, page 77: step 5; "The Distribute Software Updates Wizard stores software update source files on a specified package source share.")

**Ref-A:** page 131: "The General tab shows the discovery data for the computer.")

- *sending a third reply with a list of available updates from said web module to said user interface.*

(**Ref-A:** Fig. 3.4, page 77: step 6; "The Distribute Software Updates Wizard creates and updates the necessary packages, programs, and advertisements for distributing the software updates to SMS clients." **Ref-A:** Fig. 3.4, page 77: step 3; "The information



that the wizard displays is based on the software update inventory data that was collected during the scanning phase."

**Ref-A:** page 131: "The General tab shows the discovery data for the computer. The Components tab displays a list of components that are installed on the client and the status of each component.")

-- Claims 2, 3, and 4.

**Microsoft®** discloses *the method of claim 1,*

- *wherein said web module is in a listen state, process state, or respond state.*
- *wherein said main module is in a listen state, process state, or respond state.*
- *wherein said patch module is in a listen state, process state, or respond state.*

(The Distribute Software Updates Wizard's and Systems Management Control Panel's integrated web, main, and patch modules constantly monitor for information provided theirs associated modules, process the information once it is received, and respond to the associated modules with the corresponding information.

**Ref-A:** page 74: descriptions of Distribute Software Updates Wizard.

**Ref-A:** page 72: descriptions of Software update inventory tools. **Ref-A:** page 73: descriptions of Software Updates Installation Agent. **Ref-A:** page 131: descriptions of Systems Management Control Panel Icon.)

-- Claim 5.

**Microsoft®** discloses *the method of claim 1,*

- *wherein said web module, main module, and patch module are located on a client.*

(**Ref-A:** page 72: "Software update inventory tools scan the client computers....", **Ref-A:** page 73: "Software Updates Installation Agent facilitates the deployment of software updates on client...", **Ref-A:** page 131: "The systems Management icon is installed in Control Panel on all SMS clients.")

-- Claim 6.

**Microsoft®** discloses *the method of claim 1,*

- *wherein said web module, main module, and patch module are located on a server.*

(**Ref-A:** page 74: "The Distribute Software Updates Wizard is installed on SMS site servers and on remote SMS Administrator consoles by default.")

-- Claim 7.

**Microsoft®** discloses *the method of claim 5,*

- *wherein said patch module communicates with a patch module on a server.*

(**Ref-A:** Fig. 3.4, page 77: steps 1 and 2; communication between software update inventory tools and the Distribute Software Updates Wizard.)

-- Claim 8.

**Microsoft®** discloses *the method of claim 6,*

- *wherein said patch module communicates with a patch module on a client.*

(**Ref-A:** Fig. 3.4, page 77: steps 1 and 2; communication between the Distribute Software Updates Wizard and software update inventory tools.)

-- Claims 9 and 10.

**Microsoft®** discloses *the method of claim 1,*

- *wherein each of said requests is an Extensible Markup Language (XML) schema.*
- *wherein each of said replies is an Extensible Markup Language (XML) schema.*

(**Ref-A:** page 10: "the Security Patch Bulletin Catalog (Mssecure.xml) and the Microsoft XML parser (MSXML)...")

-- Claims 11 – 16.

**Microsoft®** discloses *the method of claim 2 or 3,*

- *wherein in said listen state, a module waits for communication with another module.*

(The integrated web and main modules of the Distribute Software Updates Wizard, Software Updates Inventory Tools, and Software Updates Installation Agent continuously monitor for communication between one another. **Ref-B:** pages 9 – 10: descriptions of "Systems Management Server 2003".)

- *wherein in said process state, a module: determines the grammatical correctness of a request; and generates a request.*
- *wherein in said respond state, a module further generates a reply message.*

(The integrated web, main, and patch modules of the Distribute Software Updates Wizard, Software Updates Inventory Tools, and Software Updates Installation Agent continuously process update requests – inherently analyze the syntax and semantics of the requests, and respond to the requests with the corresponding update information.

**Ref-B:** pages 9 – 10: descriptions of "Systems Management Server 2003".)

-- Claim 17.

**Microsoft®** discloses *the method of claim 1, further comprising:*

- *validating said requests for syntactical correctness upon receipt by a module.*

(The Distribute Software Updates Wizard must inherently understand the syntax of the requests and parameterizations made at the UI in order to be functionally operable.)

-- Claims 18, 19, and 20: are system claims for performing a method corresponding to the method of claims 1, 6, and 5, respectively; Therefore, claims 18, 19, and 20 are rejected for the same reason set forth in connection to the rejection of claims 1, 6, and 5 above, respectively.

**Examiner's Note:** The Examiner notes that it appears that the Applicant is attempting to invoke 35 U.S.C. 112, 6<sup>th</sup> paragraph, with the use of means-plus-function language in claims 21 – 37. However, the specification does not provide any specific physical structure(s) for the features that could be read into the claim to limit the scope of the means to perform the claimed functions. Therefore, the Examiner does not consider the specification to be adequate to invoke a 35 U.S.C. 112, 6<sup>th</sup> paragraph interpretation and furthermore, for the purpose of further claim analysis under 35 U.S.C. 102 and 103, The Examiner treats Claims 21 – 37 as a computer program containing machine-readable instructions stored on a physical medium for performing method or the steps recited in the claim.

-- Claims 21 – 37: are computer product claims for performing a method corresponding to the method of claims 1 – 17, respectively; Therefore, claims 21 – 37 are rejected for the same reason set forth in connection to the rejection of claims 1 – 37 above, respectively.

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-- Claim 38: is computer product claim for performing a method corresponding to the method of claim 1; Therefore, claim 38 is rejected for the same reason set forth in connection to the rejection of claim 1 above.

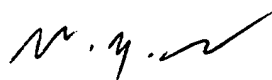
**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thai Van Pham whose telephone number is (571) 270-1064. The examiner can normally be reached on Monday - Thursday, 9am - 5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Y. Zhen can be reached on (571) 272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TVP  
11/22/2006



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